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2014 IL App (3d) 140017-U

Order filed December 16, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

SHAWN A. BARMORE, JR.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit
Petitioner-Appellant,)	Will County, Illinois
)	
)	Appeal No. 3-14-0017
v.)	Circuit No. 12-MR-1137
)	
)	
TARRY WILLIAMS, Warden, Stateville Correctional Center)	Honorable
)	Marzell Richardson
)	Roger Rickmon
Respondent-Appellee.)	Judges, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Lytton and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly dismissed petitioner's *habeas corpus* complaint which alleged trial court lacked subject matter jurisdiction due to an allegedly defective indictment.
- ¶ 2 Petitioner Shawn Barmore sought *habeas corpus* relief, alleging that the trial court where he was convicted of first degree murder lacked subject matter jurisdiction, which entitled him to immediate release from the Illinois Department of Corrections (IDOC). The trial court granted

the State’s motion to dismiss for failure to state a cause of action. Barmore appealed. We affirm.

¶ 3

FACTS

¶ 4

Petitioner Shawn Barmore was convicted of first degree murder by a Winnebago County jury in September 2005. 720 ILCS 5/9-1(a)(1)(West 2012). The trial court sentenced him to a 45-year term of imprisonment and a 3-year term of mandatory supervised release (MSR). In June 2012, Barmore filed a complaint for *habeas corpus*. In his complaint, Barmore challenged the propriety of the superseding bill of indictment and the subject matter jurisdiction of the trial court.

¶ 5

The three-count indictment charged that Barmore acted with the intent to “do great bodily harm” (720 ILCS 5/9-1(a)(1) (West 2012) (count I); with the intent to kill (720 ILCS 5/9-1(a)(1) (West 2012) (count II); and knowing “such acts create a strong probability of death or great bodily harm.” (720 ILCS 5/9-1(a)(2) (West 2012) (count III). He asserted that the superseding indictment the State filed was defective for omitting the phrase, “with intent to kill” in count I, and was thereby void, divesting the trial court of subject matter jurisdiction.

¶ 6

The State moved to dismiss, which the trial court granted without prejudice. After the trial court denied Barmore’s motion to reconsider, he filed an amended complaint, again submitting the trial court lacked subject matter jurisdiction due to a defective indictment, entitling him to *habeas corpus* relief. The State filed a motion to dismiss, which was heard, and granted. Barmore appealed.

¶ 7

ANALYSIS

¶ 8

The sole issue on appeal is whether the trial court erred when it dismissed Barmore’s complaint for *habeas corpus* relief. Barmore argues dismissal was in error, that the superseding indictment was defective and void, that the trial court accordingly lacked jurisdiction, and that he

is thus entitled to immediate release from prison. He maintains that he asserted sufficient grounds for relief under the *habeas corpus* statute and his complaint should not have been dismissed.

¶ 9 A complaint is properly dismissed when it fails to state a claim upon which relief may be granted. 735 ILCS 5/2-615 (West 2012). A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint based on defects apparent on its face. The reviewing court considers whether the allegations of the complaint, viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action. *Beacham v. Walker*, 231 Ill. 2d 51, 57-58 (2008). Our review is *de novo*. *Beacham*, 231 Ill. 2d at 57.

¶ 10 *Habeas corpus* relief may be granted when the trial court lacked jurisdiction or when some event subsequent to trial requires the petitioner's release. *Watkins v. Page*, 322 Ill. App. 3d 360, 363-64 (2001). A *habeas corpus* petition is proper when the petitioner has been detained beyond the legal time for his detention. *Watkins*, 322 Ill. App. 3d at 364. The sole remedy is the prisoner's immediate release from custody. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006).

¶ 11 Subject matter jurisdiction is the court's authority to judge the general issue involved in a case and its power to grant the particular relief requested. *In re M.M.*, 156 Ill. 2d 53, 64 (1993). Jurisdiction is bestowed by the state constitution. See Ill. Const. 1970, art. VI, § 9; *M.M.*, 156 Ill. 2d at 65. Any act by the court beyond its jurisdictional authority is void. *M.M.*, 156 Ill. 2d at 64.

¶ 12 Barmore's specific contention on appeal is that the superseding indictment relied on one theory of first degree murder rather than the disjunctive theories as set forth in the murder statute. See 720 ILCS 5/9-1(a)(1) (West 2012). He argues that the superseding indictment denied the jury its option to determine whether he committed murder with "the intent to kill" [or] to "do great bodily harm" when the State withdrew counts II and III of the indictment. According

to Barmore, leaving only the “intent to do bodily harm” language constituted an improper indictment and prevented the trial court from obtaining subject matter jurisdiction.

¶ 13 Barmore relies on the statutory requirements set forth in the Code of Criminal Procedure of 1963, which requires that all charges “allege the commission of an offense by” stating the name of the offense; the statutory provision that was allegedly violated; the nature and elements of the offense; the date and county of the offense; and the name of the accused. 725 ILCS 5/111-3(a)(1)-(5) (West 2012). Here, the indictment satisfied the statutory requirements, setting forth that the crime of first degree murder, in violation of section 9-1(a)(1) of the Criminal Code (720 ILCS 5/9-1(a)(1) (West 2012)), occurred between May 8 and May 11, 2003, in Winnebago County, and alleged to be committed by Barmore. Even if the superseding indictment was defective, which it is not, the trial court would not have lost jurisdiction. *People v. Hughes*, 2012 IL 112817, ¶ 28 (defective indictment does not divest court of jurisdiction).

¶ 14 Barmore does not point to any postconviction event that would entitle him to *habeas corpus* relief. *Faircloth*, 367 Ill. App. 3d at 125 (examples of subsequent events include serving more than the maximum term imposed or being transferred to another prison without a hearing). He is currently serving a 45-year sentence that was imposed in 2005 and is not subject to immediate discharge from the IDOC. The trial court did not err when it granted the State’s section 2-615 motion to dismiss.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.